

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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BETH ANN STRATTON,	)	
	)	NO. AA-2535
Petitioner,	)	
	)	
v.	)	
	)	
IOWA PUBLIC EMPLOYMENT	)	RULING
RELATIONS BOARD,	)	
	)	
Respondent.	)	

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After reviewing the file, the briefs, and the certified record, the Court enters the following rulings.

FINDINGS OF FACT

The facts of this case essentially are undisputed. In 1981, Beth Ann Stratton was employed as a Social Worker IV Supervisor with the Davenport District Office of the Iowa Department of Human Services. In 1992, the Department implemented a reorganization plan which reduced the number of district offices. To determine which employees would be laid off, the Department began calculating employee job retention points.

Stratton's point total was affected by three job evaluations that were not timely completed by her supervisor, between 1988 and 1991. These evaluations were completed more than 60 days after they were due. The Department's job evaluations are based on a scale of 1 to 5, with 3 meaning "competent" and 4 meaning "very good." For each evaluation period between 1988 and 1991, measured from September to August of the following year, Stratton received a rating of 4.22. Stratton's supervisor timely completed a job performance evaluation for the August 1991 to April 1992 period. The Department established April 23, 1992, as the cut-off date for

the computation of employee job retention points, for purposes of implementing the reorganization plan.

Because Stratton's evaluations were untimely, IDOP rule 11.3(3) required the Department to base Stratton's job retention points on the lower 3 (competent) performance rating for those three periods, rather than on the actual ratings of 4.22 (very good). Rule 11.3(3) requires that evaluations completed more than 60 days after the evaluation period be rated as "competent," even if the rating actually received was higher.

After final calculations, Stratton had fewer total job retention points than another Social Worker IV Supervisor, and she was laid off. It is undisputed that if Stratton's supervisor had timely completed her evaluations, she would have received an additional 28 job retention points and would not have been laid off.

Stratton then filed a grievance about her situation. In response, the Iowa Department of Personnel (IDOP) stated that Stratton's grievance was untimely and should have been filed at the time an evaluation was not forthcoming. The IDOP stated that as a supervisor, Stratton had a responsibility to administer the rules, and therefore should have been aware of the consequences of not receiving a timely evaluation.

On appeal, the Administrative Law Judge ruled that the Department did not substantially comply with Iowa Code section 19A.9(14), which requires that primary consideration for layoffs be given to performance record, and IDOP rule 13.2, which requires a

performance evaluation be prepared for each employee every 12 months. Because Stratton was not informed of her obligation to file a grievance at the time an evaluation was untimely, the ALJ concluded that she would be precluded from the right to raise the merits of a grievance, which could affect her continued employment, if her grievance was not considered timely. Thus, the ALJ ordered that Stratton be rehired. The Public Employment Relations Board (PERB) dismissed Stratton's claim and ruled that (1) PERB did not have jurisdiction to rule on the validity of rule 11.3(3), and (2) Stratton's grievance was untimely.

#### STANDARD OF REVIEW

Judicial review of the actions of an administrative agency is governed by the standards of Iowa Code section 17A.19. Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808, 811 (Iowa 1985). The court acts in an appellate capacity by reviewing the agency's decision solely to correct any errors of law. Dubuque Community Sch. Dist. v. Public Employment Relations Bd., 424 N.W.2d 427, 430 (Iowa 1987).

A court may reverse an agency action that is affected by error law. Iowa Code section 17A.19(8)(e) (1995). When deciding whether an agency made an error of law, the court gives weight to the agency's construction of a statute, but is not bound by this construction. Super Valu Stores v. Department of Revenue, 479 N.W.2d 255, 258 (Iowa 1991). It is ultimately the duty of the court to determine matters of law, including the interpretation of a statute or an agency rule interpreting a statute. Hollinrake v.

CONCLUSIONS OF LAW

Stratton presents two arguments on appeal. First, Stratton claims that her layoff did not substantially comply with Iowa Code section 19A.9(14) and IDOP rule 13.2(2). Second, Stratton claims that IDOP rule 11.3(3) is invalid because it conflicts with Iowa Code section 19A.9(14). The relevant portions of Iowa Code chapter 19A and the IDOP rules are set out below.

Iowa Code section 19A.9 provides:

The personnel commission shall adopt and may amend rules for the administration and implementation of this chapter . . . . The rules shall provide:

\* \* \*

14. For layoffs by reason of lack of funds or work, or organization, and for reemployment of employees so laid off, giving primary consideration in both layoffs and reemployment to performance record and secondary consideration to seniority in service.

At the time this grievance appeal was commenced, 581 I.A.C. section 11.3(3) provided:

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All employees shall be evaluated for performance at least annually in accordance with subrule 13.2(2). If not evaluated, or if not evaluated in accordance with subrule 13.2(2), that period shall be calculated as though competent. A performance evaluation shall be used for calculating retention points only if it is completed, signed, and dated by the supervisor within 60 days following the end of the evaluation period.

581 I.A.C. section 13.2(2) provided:

Performance evaluation. A performance evaluation shall be prepared for each employee at least every twelve (12) months by the supervisor. Additional evaluations may be prepared at the discretion of the supervisor. Numerical ratings on the evaluation form shall be accompanied by the descriptive comments supporting the ratings. The evaluation shall also include job related comments concerning areas of strength, areas for improvement, and

primary consideration to performance and secondary consideration to seniority.

This Court agrees with the conclusion reached by PERB. PERB's authority is limited only to determining if there was "substantial compliance" with Iowa Code chapter 19A and the IDOP rules adopted to implement that chapter's mandates. To challenge the validity of an IDOP rule after it is enacted, Petitioner would have to seek a declaratory judgment in the district court pursuant to Iowa Rule of Civil Procedure 262. See Randall P. Bezanson, *Judicial Review of Administrative Action in Iowa*, 21 Drake L. Rev. 1, 38-39 (1971).


As to Petitioner's first argument, that the Department did not substantially comply with Iowa Code section 19A.9(14) and IDOP rule 13.2(2), PERB found that Stratton's grievance on this matter was not timely. Under 581 I.A.C. section 12.1(1), a grievance must be initiated within 14 calendar days following the day "when the grievant first became aware of or should have through the exercise of reasonable diligence become aware of the grievance issue." With respect to a change in status affecting layoff rights, the time for filing a grievance is when the employee's status is changed, not when the employee is later laid off. Ferree v. Benton Community School District, 338 N.W.2d 870, 872 (Iowa 1983) (holding that a teacher's obligation to file a timely grievance arose when she was placed on probation, not when she was laid off because she was on probation). For Stratton, this means that her obligation to file a grievance arose at the time the evaluations were late, and not at the time that job retention points were calculated and she was laid

off. Regardless of the exact date on which Petitioner's grievance issue arose, either at the end of each twelve month period or 60 days following the period, her grievance clearly was not filed in a timely manner.

RULING

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the ruling of the Public Employment Relations Board is AFFIRMED. Costs to Petitioner.

Dated this 27<sup>th</sup> day of October, 1995.

  
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JACK D. LEVIN, JUDGE  
FIFTH JUDICIAL DISTRICT OF IOWA

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